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RACHEL THOMAS (SBN 244527)
ALE BURKE-VALLEJO (SBN 353890)
 GREENFIELD LLP
 55 S. Market Street, Suite 1500
 San Jose, California 95113
 Telephone: (408) 995-5600
 Email: rthomas@greenfieldlaw.com
 aburke-vallejo@greenfieldlaw.com

JOHN W. HARBIN (Pro Hac Vice)
WARREN J. THOMAS (Pro Hac Vice)
 MEUNIER CARLIN & CURFMAN LLC
 999 Peachtree Street NE, Suite 1300
 Atlanta, GA 30309
 Telephone: (404) 645-7700
 Email: jharbin@mcciplaw.com
 wthomas@mcciplaw.com

Attorneys for Plaintiff/Counter-Defendant NUMBER 14 B.V.

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN JOSE DIVISION

NUMBER 14 B.V.,

Plaintiff,

v.

ANALOG DEVICES, INC.; MAXIM
 INTEGRATED PRODUCTS, INC.,

Defendants.

ANALOG DEVICES, INC.; MAXIM
 INTEGRATED PRODUCTS, INC.,

Counterclaimants,

v.

NUMBER 14 B.V.,

Counter-Defendant.

Case No.: 5:24-cv-02435-EKL-NMC

**[PROPOSED] ORDER ON DISCOVERY
 ISSUES
 [RE ECF 140, 151]**

On May 12, Plaintiff Number 14 B.V. (Number 14) filed a discovery letter brief seeking Court-ordered relief as to two categories of information (related to three of Number 14's August 2024 Requests for Production) possessed by Defendants. ECF 140. At the May 14 discovery conference, the Court directed Defendants to respond to Number 14's letter brief by May 20. On Tuesday, May 20, Defendants filed their response in opposition. ECF 151. The Court then ordered the parties to "file proposed orders" on discovery issues identified in ECF 140 and 151 by noon on May 27, though it "encouraged" the parties "to explore reasonable compromises." ECF 153. The Court held a hearing on the issues on May 28, 2025.

Upon review of the parties' papers and heard argument at the hearing, the Court finds and ORDERS as follows:

Defendants have not met their obligation to cooperate in discovery

Following the Court's direction to explore a compromise, Defendants' counsel raised the prospect of a further meet and confer to explore potential "middle ground" as contemplated by the Court during a video conference on Wednesday May 21. Counsel for Number 14 stated it had not had a chance to fully consider Defendants' response yet but stated it would follow up the next day.

At 11:28 AM on Thursday, May 22, Number 14 emailed Defendants expressly requesting they explain the basis for selecting their "proposed list of 15 comparable amplifiers" and why they believed that proposal addressed the issue.¹ A few hours later, at 2:52 PM, Number 14 emailed again, copying Defendants' newly-added counsel into the email conversation, and proposed several times on Thursday and Friday to meet and confer on the issues in the parties discovery letters—

¹ Defendants' May 20 response letter contended that Number 14 "did not (and never has)" provided "its proposal" in response to Defendants' proposed list of "15 comparable amplifiers." But Number 14's May 6 response to Defendants' May 3 proposal observed that it seemed like Defendants had "plucked a list of fifteen products out of thin air ... without any explanation of why you included them or excluded others." Defendants did not respond to that, either. Number 14's May 22 email expressly requested that explanation so that it could consider whether and how the proposal would meet Number 14's needs for the discovery.

1 over nine hours of availability provided across those days. That email also repeated the earlier
2 question about the first discovery dispute and added a question about the second issue (the “cost
3 reports”) that Number 14 wanted to “hopefully talk about.”

4 Although the parties were conferring (by phone and email) about the Joint Stipulation being
5 filed on Friday, Defendants did not respond to either of Number 14’s emails about the discovery
6 disputes. Number 14 sent a follow-up on Friday at 1:53 PM noting Defendants’ previously stated
7 intent to confer and stating that Number was “still available at the [proposed] times” on Friday
8 (which extended to 4:30 PM Pacific to accommodate Defendants’ counsel’s workday. Number 14
9 also offered availability to confer on Saturday and on the Monday Memorial Day holiday. Further,
10 Number 14 provided its “current thinking” on the discovery issues “[i]n the interest of continuing
11 to move the ball forward and be candid.” Number 14 stated it was “still open to hearing
12 [Defendants’] thoughts on the 15 products” question, that it believed the parties “may be willing to
13 find a compromise” on the “cost reports” dispute, and that the answer to the previous days’ email
14 question “will help us (and perhaps you) evaluate that.”

15 Forty-three minutes later, Defendants’ counsel replied by email with responses related to
16 both discovery issues, but they did not respond to the requests for an actual conversation.
17 Defendants’ counsel did not state they were unavailable at any of the times Number 14 had
18 proposed, and they did not propose any alternatives; they just did not respond to that request. On
19 the “amplifier products” issue, Defendants’ email included two paragraphs that reiterated their
20 positions about why they believed Number 14’s request “has no bearing on any issue in the case
21 and is thus not relevant or subject to discovery.” Cf. ECF 151 at 2. Defendants also included one
22 sentence stating the 15 products “were selected because they are products that have similar
23 characteristics to those allegedly achieved by the patents, including slew rate, bandwidth, offset,
24 and noise, while having parameters similar to the specifications in the License Agreement.”
25 Defendants then stated, “Please confirm that Plaintiff agrees to limit RFPs 44 and 46 to financial
26 data for the 15 products.”

27 On the “cost reports” issue, Defendants stated they had “now discovered a manner to pull in
28 a single spreadsheet that has not been used before.” Defendants provided an informal copy of the

1 information they intended to “formally produc[e] this next week,” stated they would also produce a
 2 similar report covering FY21 and FY22 (purporting to satisfy Number 14’s compromise request,
 3 *see* ECF 140 at 3), and stated this new “manner” of providing the information would “resolve the
 4 dispute.”

5 Number 14 replied on Monday, May 26, with several questions that it noted the parties
 6 “would have been able to cover ... if Defendants had responded to [Number 14’s] request for a
 7 meet and confer.” Defendants responded that afternoon asking for availability to confer on
 8 Tuesday, May 27 at 9AM Pacific. Number 14 agreed to that time, and the parties conferred that
 9 day, though no agreement was reached.

10 The Court finds that Defendants did not satisfy their obligation to proceed with discovery in
 11 a manner that would secure the “just, speedy, and inexpensive determination” of this action. Fed.
 12 R. Civ. P. 1. The recent instance recited above of Defendants not responding to requests for
 13 conferences on multiple occasions is not the first instance the Court has been made aware of.
 14 *Supra*; ECF 140 at 3 (“Plaintiff twice tried to schedule another call (for after the expected written
 15 update), but Defendants never responded to those requests.” (citing ECF 131 at 1:11–17)).²
 16 Defendants have generally not been diligent in proceeding with discovery. *See generally* ECF 104
 17 (Joint Discovery Letter Brief). Nor have Defendants held to the commitments they have made or
 18 that the Court has ordered. ECF 123 at 2:19–3:4 (noting the Court ordered schedule of weekly
 19 productions and Defendants’ conceding that they did not comply); *id.* at 3:10 (Defendants stating
 20 to Court they would “provide an update to Plaintiff by April 18” on the cost reports issues that are
 21 one subject of ECF 140); ECF 140 (noting Defendants did not provide the promised April 18
 22 update until over two weeks later, on May 3).

23 Further, Defendants’ most recent response and “discovery” of a manner that they have
 24 proposed to resolve the parties’ dispute about the “cost reports” (the second topic of dispute, RFP
 25 48) further shows they have not been diligent in conducting discovery and have unreasonably and
 26 vexatiously multiplied these proceedings (and Number 14’s attorneys’ fees). The discovery
 27

28 ² Defendants have not disputed Number 14’s characterization. *See generally* ECF 151.

1 requests at issue were propounded almost nine months ago, on August 30, 2024. Defendants,
2 sophisticated companies, have had more than ample time to learn what reports could be generated
3 and propose this solution months ago.

4 Defendants' purported discovery apparently happened during the three-day period between
5 May 20—when Defendants represented in a filing that Number 14's compromise request would
6 "cover[] over a thousand reports" and "require more than a month to produce" (ECF 151 at 3) and
7 Defendants' May 23 email representing the information was ready to be produced. Even if
8 Defendants' newly discovered report is accurate and fully satisfies the request, it comes almost
9 nine months after the requests were served and four months after Defendants, on January 10, raised
10 an issue with their production. Number 14 has expended numerous hours analyzing Defendants'
11 proposed reports, meeting and conferring, and bringing this discovery dispute to the Court only for
12 Defendants to say at the last minute that they can quickly and easily comply.

13 The same is true regarding the other disputed issue—sales information regarding "Stand-
14 Alone Amplifiers." The parties held "hours-long video conferences on October 21 and 30," the
15 result of which was that the Defendants' objections were resolved, and Defendants agreed to
16 produce responsive documents. Summarizing these conferences, Number 14 wrote on November 4:

17 Number 14 clarified that **RFP 44** is for "Stand-Alone Amplifiers," as defined, and
18 that the intent was to allow comparison of the requested information for *non-*
19 *royalty-eligible* products. With that clarification, Defendants agreed to amend their
20 response and produce the responsive documents.

21 ...

22 As for **RFP 46**, Number 14 agreed to limit this request to Stand-Alone Amplifiers,
23 as defined. We explained the reason for asking for list and actual prices. Defendants
24 agreed to amend their response and produce the responsive documents.

25 Defendants agreed to produce the documents responsive to **RFPs 48**

26
27 Nov. 4, 2024 Letter from Number 14's counsel at 4 (emphasis in original).
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1 Defendants replied by letter on November 20, and stated that, except for certain exceptions
2 that do not apply to this issue, “We generally agree that your summary accurately reflects our
3 conversations on October 21 and 30, 2024”. Defendants thus cannot dispute that they have
4 known since October that Number 14 was seeking discovery about products that are “beyond” the
5 scope of the License Agreement *and* that they agreed to produce it.

6 Months later, Defendants attempted to withdraw their agreement and their subsequent
7 correspondence ignores the prior extensive meet and confer efforts. Defendants now dispute the
8 “purported basis for relevance” of RFPs 44 and 46, based on statements in the Court’s March 31
9 order granting Number 14’s motion to dismiss. ECF 118. But that order dismissed several of
10 Defendants’ counterclaims for failure to state for breach of contract, fraud, and misrepresentation.
11 It was not a final determination of the meaning of the relevant contract terms, and it did not address
12 at all the relevance of the information at issue for purposes of discovery. Further, Defendants could
13 have made the legal argument they are making now five months earlier, if they agreed with the
14 proffered construction of the contract.’ Defendants waived their objection to the relevance of the
15 information after Number 14 explained that a “comparison” was *the purpose* of the request.
16 Defendants state they are not “reneging on a prior agreement,” but that is exactly what they are
17 trying to do.

18 Further, Defendants’ letter suggests they did not sufficient “investigat[e] [their] existing
19 product categories” until between March 11 and 15 (still *before* the Court’s order on the motion to
20 dismiss). *See* ECF 151 at 2. In the most charitable light, Defendants agreed (in October or
21 November), to use a definition from the License Agreement to search for and locate responsive
22 information for RFPs 44 and 46, but they apparently did not realize the full scope or difficulty in
23 using that definition until mid-March 2025. That extreme delay is not justifiable.

24 These facts indicate that Defendants only took their discovery obligations seriously at the
25 threat of a motion to compel or sanctions. It was wasteful of the parties’ and the Court’s
26 resources—anything but the “just, speedy, and inexpensive determination” of this action. Fed. R.
27 Civ. P. 1. Defendants’ conduct.

Order for Production

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4 1. Defendants are ordered to produce the information requested by Plaintiff's RFPs 44
5 and 46, including the "Operational Amplifiers" or "Current Sense" amplifiers as described by
6 Defendants. See ECF 151 at 2. As noted above, Defendants agreed to produce this information
7 according to the agreed scope of the request in late October 2024 with full knowledge of the
8 definition they were agreeing to and would be applying to their own amplifier products. The Court
9 finds that Defendants waived their objections to the request that they have sought to reassert.

10 2. Further, the court finds the sales information about the Amplifiers is sufficiently
11 relevant to be discoverable. "Rule 26(b)(1)'s definition of relevance is broad. *See Snipes v. United*
12 *States*, 334 F.R.D. 548, 550 (N.D. Cal. 2020); *V5 Techs. v. Switch, Ltd.*, 334 F.R.D. 306, 309 (D.
13 Nev. 2019), *aff'd sub nom. V5 Techs., LLC v. Switch, LTD.*, 2020 WL 1042515 (D. Nev. Mar. 3,
14 2020) (noting that relevance for discovery purposes remains broad even after the 2015 amendments
15 of the Federal Rules of Civil Procedure)." *DeSilva v. Allergan USA, Inc.*, No. 8:19-CV-01606-JLS-
16 JDE, 2020 WL 5947621, at *1 (C.D. Cal. Aug. 11, 2020). The Court finds the information may be
17 relevant to the contract dispute. The comparison of the prices Defendants obtained selling
18 Amplifiers that incorporate the patented technology and those that do not is practical, real-world
19 evidence of the value and benefits of the patents at issue, which per Defendants' counterclaim is a
20 disputed issue in the litigation. Second, if Defendants obtained higher price for amplifiers utilizing
21 the patented technology with those that do not, that may be significant evidence of the commercial
22 value of the patents at issue, which is one of the objective indicia of nonobviousness, a factor that
23 must be considered in relation to Defendants' counterclaims that one or more the patents is invalid
24 as obvious. Finally, Defendants do not argue that producing this information is disproportionate to
25 the needs of the case or unduly burdensome. *See generally* ECF 151.

26
27 3. Defendants are ordered to produce the "cost reports" for all royalty-eligible products
28 for Fiscal Years 2021 to the present, at minimum, as well as any earlier years for which the data is

1 maintained in reasonably the same format or system and can be accessed in reasonably the same
2 manner.³ Defendants are ordered to produce the cost information in a single document for all
3 applicable time periods and with labels plainly indicating the time periods for which each applies.
4 Defendants may supplement or “overlay” their May 30 expected production of FY23–24 (the
5 second “bucket” referenced in ECF 143) by June 9 to include the data beyond that date. Further,
6 this order confirms that Defendants must still produce all historical cost reports for the five
7 products Number 14 selected by May 30.

8 3. The Court finds, in view of the above discussion, that Defendants’ failure to
9 produce these items of discovery was not substantially justified, there are no circumstances that
10 would make an award of expenses to Number 14 unjust, and Number 14 attempted to resolve these
11 disputes in good faith before seeking the Court’s relief. Further, the Court finds that Defendants
12 have unreasonably and vexatiously delayed and multiplied these proceedings. Accordingly, the
13 Court permits Number 14 to file a motion for attorney’s fees under FRCP 37, 28 U.S.C. § 1927,
14 and/or the Court’s inherent authority, by June 30.

15 Dated:

16 _____
Nathaniel M. Cousins
United States Magistrate Judge
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³ Defendants have indicated this may include data back to at least 2020.